



April 6, 2023

National Freedom of Information Officer  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (2822T)  
Washington, DC 20460

**RE: FREEDOM OF INFORMATION ACT REQUEST**

Dear FOIA Officer:

On August 21, 2021, Public Employees for Environmental Responsibility (PEER) submitted a complaint to the National Archives and Records Administration (NARA) concerning what we alleged were widespread violations of the Federal Records Act (44 U.S.C. § 2101-3501) by the U.S. Environmental Protection Agency (EPA) relating to two classes of communications where EPA appeared to be deviating from its Interim Records Management Policy: 1) Records related to the development of its Waters of the United States (WOTUS) rule; and 2) Alterations of chemical risk assessments within EPA's Office of Chemical Safety and Pollution Prevention (OCSPP).

In a letter dated March 18, 2022, Mr. Laurence Brewer, Chief Records Officer of the U.S. wrote to John Ellis of EPA, referencing EPA's "final report regarding [these] allegations of unauthorized disposition" of EPA records by PEER. The letter indicated that based upon this report, "NARA considers this matter closed."

Pursuant to the Freedom of Information Act, 5 U.S.C. 552, as amended, PEER requests information concerning this matter. Specifically, we request the following:

1. A copy of the referenced final report from EPA to NARA;
2. To the extent it is not delineated in this report, information indicating which EPA officials or contractors compiled this report;
3. Interview transcripts and/or other records of interviews the report author(s) obtained in compiling this report; and
4. All communications (including emails, texts, and phone logs) between EPA and NARA relating to this matter from the initiation of our complaint until it was deemed closed by NARA.

For any documents or portions of documents that you block release due to specific exemption(s) from the requirements of the Freedom of Information Act, please provide an index itemizing and describing the documents or portions of documents withheld. The index should, pursuant to the holding of Vaughn v. Rosen (484 F.2d 820 [D.C. Cir. 1973] cert. denied, 415 U.S. 977 [1974]),

provide a detailed justification for claiming a particular exemption that explains why each such exemption applies to the document or portion of a document withheld.

PEER requests that all fees be waived because “disclosure of the information is in the public interest . . . and is not primarily in the commercial interest of the requestor” (5 U.S.C. 552 (a) (4)(A)). Disclosure of these records is in the public interest for the following reasons:

*1. The records concern the operations or activities of the Government.*

The FOIA request is, by its terms, limited to identifiable activities of EPA employees and/or contractors. Thus, the requested records concern operations or activities of the Government.

*2. The disclosure of the requested records is likely to contribute to public understanding of these operations or activities.*

The requested documents will enable the public to see how EPA conducted its investigation into two sets of alleged Federal Records Act violations, including the thoroughness of this probe.

The records will also indicate what safeguards EPA has in place to ensure that draft staff comments on risk assessments cannot be over-written or replaced without preserving those drafts or identifying the officials who edited or deleted them.

Overall, the request will reveal the extent to which agency claims of transparency are actually being implemented.

*3. The release of these requested records will contribute significantly to public understanding of the governmental activities.*

Beyond the recordkeeping functions referenced above, the substantive issues addressed by the original PEER complaint have great interest to the public:

- The WOTUS records relate to staff comments on one of the most substantive EPA action taken during the Trump administration – the revision of WOTUS – so as to greatly restrict the reach of the Clean Water Act; and
- The OCSPP hazard identifications and risk conclusions which are the subject of the PEER complaint relate to the safe exposure levels by workers and public to new chemicals approved for release into commerce by EPA. Occupational diseases caused by industrial chemicals result in an estimated annual 50,000 to 70,000 deaths, and 350,000 cases of illness in the United States.

These issues go to the core of the EPA mission. The underlying issue raised by the PEER Federal Records Act complaint is whether EPA was faithfully executing its duties with respect to these statutory mandates. In particular, this request relates to whether EPA preserved the expressed views and conclusions voiced by its own subject matter experts such that they could be used in the official decision-making process.

The information will also enable the public to ascertain the extent to which EPA thoroughly and objectively investigates complaints against its political appointees and senior-most managers.

PEER intends to provide the requested information to members of Congress and its relevant committees. We also intend to disseminate it to the general public through —

- Release to the news media;
- Posting on the PEER web page which draws between 1,000 and 10,000 viewers per day; and
- Publication in the PEER newsletter that has a circulation of approximately 20,000, including 1,500 environmental journalists.

Through these methods, PEER generates an average of 1.5 mainstream news articles per day. Moreover, each of these underlying issues has already generated extensive media coverage.

4. *Disclosure would not serve a commercial interest of the requestor.*

Disclosure is in no way connected with any commercial interest of the requestors in that PEER is a nonprofit, nonpartisan public interest organization concerned with upholding the public trust through responsible management of our nation's resources and with supporting professional integrity within public land management and pollution control agencies. To that end, PEER is designated as a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code.

If you have any questions about this FOIA request, please contact me at (510) 213-7028. I look forward to receiving the agency's final response within 20 working days.

Cordially,



Jeff Ruch  
PEER Pacific Director